

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

**UNION PACIFIC RAILROAD
COMPANY,**

Plaintiff,

V.

**PROGRESS RAIL SERVICES
CORPORATION,**

Defendant.

8:10CV38

ORDER

On May 3, 2013, the Court entered an order precluding Plaintiff's expert witness, Hans Iwand, from "offering his opinion that corrosion pits and/or fatigue cracks present in the axles before their refurbishing by [Defendant] caused the axle failures." ([Filing 263.](#)) Yesterday, Defendant filed a motion seeking to modify the Court scheduling order to permit Defendant to file a motion for summary judgment out of time.¹ ([Filing 266.](#)) Defendant claims that due to the Court's May 3, 2013 order, Plaintiff will be unable to establish an essential element of its negligence claim.

A progression schedule "may be modified only for good cause and with the judge's consent." [Fed. R. Civ. P. 16\(b\)\(4\)](#). "Good cause means the party has shown diligence in attempting to meet the case management order's requirements." [Woodmen of the World Life Ins. Soc. v. U.S. Bank Nat. Ass'n, No. 8:09CV407, 2012 WL 1637246, *4 \(D. Neb. May 7, 2012\)](#) (internal quotation and citation omitted). However, when deciding whether to modify a scheduling order, courts also consider "other factors such as prejudice to parties opposing modification." *Id.*

Trial in this case is set to begin on June 11, 2013. Given the fast-approaching trial

¹ The deadline for filing motions for summary judgment was July 13, 2012. (Filing 150.)

date, permitting Defendant to file a summary judgment motion at this time would unduly prejudice Plaintiff. Defendant has not provided sufficient justification for allowing modification of the scheduling order at this late stage in the litigation.

Accordingly,

IT IS ORDERED that Defendant's Motion for Leave to File a Motion for Summary Judgment ([filing 266](#)) is denied.

DATED May 15, 2013.

BY THE COURT:

**S/ F.A. Gossett
United States Magistrate Judge**